

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 18, 2025**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LUIS ANDRE PEREZ,

Plaintiff,

v.

STATE OF WASHINGTON,  
WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS,  
AIRWAY HEIGHTS CORRECTIONS  
CENTER, JAMES KEY, and  
ANDREA PORTER,

Defendants.

No. 2:24-CV-00022-MKD

ORDER GRANTING JUDGMENT  
ON THE PLEADINGS AS TO  
STATE DEFENDANTS AND  
DENYING AS TO DEFENDANT  
ANDREA PORTER

**ECF Nos. 36, 37**

Before the Court is Defendants the State of Washington, Washington State Department of Corrections, Airway Heights Corrections Center, and James Key's (the "State Defendants") Motion for Judgment on the Pleadings, ECF No. 36, and Defendant Andrea Porter's Joinder to the State Defendants' motion, ECF No. 37. The Court held a hearing on May 2, 2025. ECF No. 47. Douglas Phelps represented Plaintiff. Brandon Slaven represented the State Defendants. Troy

1 Nelson represented Defendant Porter. The Court has reviewed the record, heard  
2 from counsel, and is fully informed. For the following reasons, the Court grants  
3 judgment on the pleadings as to the State Defendants and denies judgment on the  
4 pleadings as to Defendant Porter.

### 5 **BACKGROUND**

6 Plaintiff alleges the following in his Complaint. *See* ECF No. 1-7. Plaintiff  
7 was an inmate in the custody of Defendant Airway Heights Corrections Center and  
8 resided in the R-Unit. *Id.* at 2 ¶¶ 2.1, 2.3. Defendant Porter was assigned to this  
9 unit while Plaintiff resided there. *Id.* at 2 ¶ 2.3. In 2017, Plaintiff was moved to  
10 the L-Unit and did not see Defendant Porter again until 2018. *Id.* at 3 ¶ 2.4. When  
11 Plaintiff saw Defendant Porter again in 2018, he informed her that he was working  
12 in the kitchen. *Id.* at 3 ¶ 2.5. Defendant Porter told Plaintiff that she had put in a  
13 bid to work in the kitchen, and she began working there in 2019. *Id.* at 3 ¶¶ 2.5-  
14 2.6.

15 While working in the kitchen, Plaintiff and Defendant Porter worked closely  
16 together. *Id.* at 3 ¶ 2.6. Defendant Porter would discuss her personal life,  
17 relationships, sex, and other inappropriate topics with Plaintiff. *Id.* In 2020, at  
18 Defendant Porter's suggestion, Plaintiff changed his job role and days off to spend  
19 more time with her. *Id.* at 3 ¶ 2.7.  
20

1 On or about November 11, 2020, Defendant Porter escorted Plaintiff into a  
2 fridge cooler, where she sexually assaulted him. *Id.* at 3 ¶ 2.8. Defendant Porter  
3 told Plaintiff that if anyone found out about the interaction he would be placed in  
4 segregation and would not be released. *Id.* at 3 ¶ 2.9. Defendant Porter further  
5 indicated that she would “blow her head off” if she went under investigation. *Id.*  
6 Plaintiff did not report the assault. *Id.*

7 Defendant Porter continued to sexually assault Plaintiff nearly forty times,  
8 until his release on March 17, 2021. *Id.* at 3 ¶ 2.10. Plaintiff did not report any  
9 subsequent assault because he was still afraid that he would lose his freedom, not  
10 be released, or that Defendant Porter would die by suicide. *Id.* Defendant Porter  
11 also approached Plaintiff for help selling drugs inside the Airway Heights  
12 Corrections Center. *Id.*

13 On or about April 1, 2021, following Plaintiff’s release from custody,  
14 Defendant Porter contacted Plaintiff on TikTok to ask for his cell phone number.  
15 *Id.* at 3 ¶ 2.11. Defendant Porter then called Plaintiff and threatened to commit  
16 suicide. *Id.* Plaintiff believed the threat was genuine because he heard her cock a  
17 gun during the call. *Id.*

18 From April 1, 2021, to October 31, 2021, Plaintiff and Defendant Porter  
19 were in an intimate relationship. *Id.* at 4 ¶ 2.12. Plaintiff makes note of Defendant  
20 Porter’s behavior throughout their relationship, to include pointing a gun at

1 Plaintiff and threatening to kill him on ten occasions and pointing a gun at her own  
2 head and threatening to commit suicide on thirty occasions. *See id.* at 4 ¶¶ 2.13-  
3 2.18.

4 On December 8, 2021, Plaintiff was again taken into custody. *Id.* at 4 ¶  
5 2.19. At an unspecified Indeterminate Sentence Review Board meeting, the Board  
6 told Plaintiff to file a Prison Rape Elimination Act (“PREA”) investigation. *Id.*  
7 Plaintiff filed a PREA petition in 2021, which has not been investigated or referred  
8 to an outside investigative agency. *Id.* at 4 ¶ 2.21.

9 Plaintiff filed the instant Complaint on November 1, 2023, asserting 42  
10 U.S.C. § 1983, Eighth Amendment, Fourteenth Amendment, and negligence  
11 claims against all Defendants and a negligent supervision claim against Defendants  
12 Key, Airway Heights Corrections Center, and Washington State Department of  
13 Corrections. ECF No. 1-7. The State Defendants moved for judgment on the  
14 pleadings as to all claims on January 8, 2025. ECF No. 36. Defendant Porter filed  
15 her “joinder” to the State Defendants’ motion on January 9, 2025. ECF No. 38.

## 16 LEGAL STANDARD

17 “After the pleadings are closed—but early enough not to delay trial—a party  
18 may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). The standard  
19 governing a Rule 12(c) motion for judgment on the pleadings is “functionally  
20 identical” to that governing a Rule 12(b)(6) motion to dismiss. *U.S. ex rel.*

1 *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011).  
2 “A judgment on the pleadings is properly granted when, taking all the allegations  
3 in the non-moving party’s pleadings as true, the moving party is entitled to  
4 judgment as a matter of law.” *United States v. Teng Jiao Zhou*, 815 F.3d 639, 642  
5 (9th Cir. 2016) (quoting *Fajardo v. Cnty. of Los Angeles*, 179 F.3d 698, 699 (9th  
6 Cir. 1999)).

## 7 DISCUSSION

8 The State Defendants move for judgment on the pleadings, principally  
9 contending that Plaintiff’s Section 1983 claims fail as a matter of law as asserted  
10 against Defendants the State of Washington, the Washington Department of  
11 Corrections, and Airway Heights Corrections Center and are unsupported by  
12 sufficient factual allegations as asserted against Defendant Key; and that Plaintiffs’  
13 state law claims are unsupported by sufficient factual allegations. Defendant  
14 Porter filed a non-substantive joinder to the State Defendants’ motion. The Court  
15 discusses each in turn.

### 16 A. State Defendants

#### 17 i. Federal Claims

18 In his 42 U.S.C. § 1983 claim, Plaintiff alleges the State Defendants “caused  
19 or failed to prevent injury” to Plaintiff in violation of the Eighth Amendment and  
20 the Fourteenth Amendment. ECF No. 1-7 at 5-6. Plaintiff’s Section 1983 claims

1 against Defendants the State of Washington and Airway Heights Corrections  
2 Center are not cognizable, however, because states and state agencies are not  
3 “persons” subject to suit under Section 1983. *See Will v. Michigan Dep’t of State*  
4 *Police*, 491 U.S. 58, 71 (1989) (“We hold that neither a State nor its officials acting  
5 in their official capacities are ‘persons’ under § 1983.”).

6 Plaintiff’s Section 1983 claims against Defendant Key, in his individual  
7 capacity, are unsupported by sufficient factual allegations. As to Plaintiff’s Eighth  
8 Amendment claim, Plaintiff does not sufficiently allege that Defendant Key was  
9 deliberately indifferent to a substantial risk of serious harm, as is necessary to state  
10 an Eighth Amendment claim. *See Farmer v. Brennan*, 511 U.S. 825, 828-29  
11 (1994). The test for whether a prison official acts with deliberate indifference is a  
12 subjective one: the official must “know[ ] of and disregard[ ] an excessive risk to  
13 inmate health and safety; the official must both be aware of the facts from which  
14 the inference could be drawn that a substantial risk of serious harm exists, and he  
15 must also draw the inference.” *Id.* at 837. Plaintiff has alleged no facts showing  
16 Defendant Key acted with deliberate indifference to Plaintiff’s safety.

17 As to Plaintiff’s Fourteenth Amendment claim, Plaintiff proffers only  
18 insufficient legal conclusions. *See* ECF No. 1-7 at 6 ¶5.22 (stating Defendant  
19 Key’s “fail[ure] to investigate [Plaintiff’s] PREA claim violat[ed] [Plaintiff’s] 14<sup>th</sup>  
20 Amendment right to equal protection and due process.”). “While legal conclusions

1 can provide the framework of a complaint, they must be supported by factual  
2 allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Plaintiff alleges no facts  
3 that, if true, would indicate Defendant Key acted with the intent and purpose to  
4 discriminate against Plaintiff based upon membership in a protected class, or that  
5 Defendant Key purposefully treated Plaintiff differently than similarly situated  
6 individuals without any rational basis for the disparate treatment, *see, e.g., Vill. of*  
7 *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (standard for Fourteenth  
8 Amendment equal protection claim), or that would indicate Plaintiff was denied a  
9 specified liberty interest and that he was deprived of that liberty interest without  
10 the constitutionally required procedures, *see, e.g., Swarthout v. Cooke*, 562 U.S.  
11 216, 219 (2011) (standard for Fourteenth Amendment due process claim).

12 The Court thus dismisses these claims with prejudice. *See Cambron v.*  
13 *Starwood Vacation Ownership, Inc.*, 945 F. Supp. 2d 1133, 1146 (D. Haw. 2013)  
14 (“Dismissal with prejudice is appropriate only when the complaint cannot be saved  
15 by amendment.”) (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,  
16 1052 (9th Cir. 2003)).<sup>1</sup>

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18 <sup>1</sup> At the hearing, the Court inquired as to whether additional factual allegations  
19 existed but were not pled. Plaintiff’s counsel did not indicate Plaintiff had further  
20 factual allegations in support of these causes of action.

1                   ii.     *State Law Claims*

2           Plaintiff asserts negligence and negligent supervision claims against the  
3 State Defendants, alleging the State Defendants failed to adequately supervise  
4 Defendant Porter and failed to adequately investigate Plaintiff's PREA claim. ECF  
5 No. 1-7 at 6-7. The State Defendants seek dismissal of both claims, contending  
6 Plaintiff's Complaint, among other reasons, lacks sufficient factual allegations that,  
7 if true, would indicate the State Defendants' actions and inactions were the  
8 proximate cause of Plaintiff's injuries.

9           Both claims are factually insufficient. Plaintiff appears to rest his  
10 negligence claim on the State Defendants' failure to conduct a PREA investigation.  
11 *See id.* at ¶ 6.24. In conclusory fashion, Plaintiff argues this failure to investigate  
12 was "outrageous and egregious." *Id.* Yet Plaintiff proffers no facts that causally  
13 connect the alleged failure to conduct a PREA investigation with Defendant  
14 Porter's actions. Indeed, as Plaintiff's counsel conceded at the hearing, Plaintiff  
15 does not allege that Defendant Porter's actions continued *after* Plaintiff filed his  
16 PREA claim.

17           Plaintiff's negligent supervision claim fails for a similar reason. As the State  
18 Defendants correctly argue, Plaintiff "fails to allege facts that support an assertion  
19 that the State Defendants' failure to supervise was the proximate cause of the  
20 injuries and not the alleged separate acts of an employee." ECF No. 36 at 12.



1 Plaintiff's conclusory allegations are insufficient to state a valid negligent  
2 supervision claim.

3 The Court thus dismisses these claims with prejudice. *See Cambron*, 945 F.  
4 Supp. 2d at 1146.

5 **B. Defendant Porter**

6 As discussed at the hearing, counsel for Defendant Porter concurred with the  
7 Court's assessment that the State Defendants had not argued on behalf of  
8 Defendant Porter and that Defendant Porter had not proffered any facts or  
9 argument supporting the dismissal of any claims against Defendant Porter.  
10 Accordingly, the Court denies Defendant Porter's joinder to the State Defendants'  
11 motion.

12 **CONCLUSION**

13 For the reasons stated above, the Court grants the State Defendants' motion  
14 for judgment on the pleadings and denies Defendant Porter's joinder motion for  
15 judgment on the pleadings.

16 Accordingly, **IT IS HEREBY ORDERED:**

- 17 1. The State Defendants Motion for Judgment on the Pleadings, **ECF**  
18 **No. 36**, is **GRANTED**.
- 19 2. Plaintiff's claims against the State Defendants are **DISMISSED**.
- 20 3. Defendant Porter's joinder, **ECF No. 37**, is **DENIED**.

1           **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
2 Order, **enter judgment**, and provide copies to the parties.

3                   DATED June 18, 2025.

4                               s/Mary K. Dimke  
5                               MARY K. DIMKE  
6                               UNITED STATES DISTRICT JUDGE  
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